

**REMARKS**

Claims 1-4, 7-13, 15-22, 24-25, 28, and 29 are pending in the application of which 1, 21, 28 and 29 are independent. By this Amendment, Applicants propose amending claims 1, 7, 8, 10, 11, 21, 28 and 29, and cancel claims 5, 6, 14, and 23.

In the Office Action dated January 22, 2009 ("Office Action"), the Examiner took the following actions:

- (1) rejected claims 1-20 under 35 U.S.C. § 112, second paragraph, as being indefinite;
- (2) rejected claims 28 and 29 under 35 U.S.C. § 101 as being directed to non-statutory subject matter;
- (3) rejected claim 29 under 35 U.S.C. § 103(a) as being unpatentable over PCT Patent Application Publication WO 03/005192 ("Reimer") in view of U.S. Patent No. 6,453,426 ("Gamache");
- (4) rejected claims 21, 22 and 24 under U.S.C. § 103(a) as being unpatentable over *Reimer* in view of U.S. Patent No. 5,551,047 ("Mori") and further in view of *Gamache*;
- (5) rejected claim 23 under U.S.C. § 103(a) as being unpatentable over *Reimer*, in view of *Mori*, in view of *Gamache*, and further in view of U.S. Pat. Publication No. 2002/0133537 ("Lau");
- (6) rejected claims 1-8, 10, and 12-20 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. Publication 2003/01402667 ("Abbondanzio") in view of *Reimer*, in view of *Mori* and further in view of *Gamache*;
- (7) rejected claim 28 under 35 U.S.C. § 103(a) as being unpatentable over *Abbondanzio*, in view of *Reimer*, in view of *Mori*, and further in view of *Lau*;

- (8) rejected claim 25 under 35 U.S.C. § 103(a) as being unpatentable over *Reimer*, in view of *Abbondanzio*, and *Gamache*, and further in view of *Mori*;
- (9) rejected claim 9 under 35 U.S.C. § 103(a) as being unpatentable over *Abbondanzio*, in view of *Reimer*, in view of *Mori*, in view of *Gamache*, and further in view of U.S. Pat. Publication 2004/0255191 ("Fox"); and
- (10) rejected claim 11 under 35 U.S.C. § 103(a) as being unpatentable over *Abbondanzio*, in view of *Reimer*, in view of *Mori*, in view of *Gamache*, and further in view of U.S. PG Publication 2003/0046394 ("Goddard").

Applicants respectfully traverse these rejections as follows.

**I. 35 U.S.C. § 112, Second Paragraph**

The Examiner rejected claims 1-20 under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner based this rejection on a lack of antecedent basis in claim 1 for "cyclically repeating the shifting and re-installing." Amended claim 1 does not include this phrase. Therefore, the rejection under 35 U.S.C. § 112, second paragraph, is moot and should be withdrawn.

**II. 35 U.S.C. § 101**

The Examiner rejected claims 28 and 29 under 35 U.S.C. § 101 as being directed to non-statutory subject matter based on the recitation of a "computer-readable medium," which the Examiner interprets as including electronic signals. Office Action at 3. Amended claims 28 and 29 recite a "tangible computer-readable storage medium," rendering the Examiner's rejection moot. This amendment is supported by the specification, which recites a "record medium" (e.g., para. [0030]) and "a medium largely explained above (cf. memory 920)" (para. [0118]), "an article of manufacture having a

computer readable medium" (id.), and other passages. Based on these and other passages, at the time of filing, one of ordinary skill in the art would have understood the disclosure to describe a tangible computer-readable storage medium. Consequently, the Examiner should withdraw the 35 U.S.C. § 101 rejection.

**III. 35 U.S.C. § 103(a)**

Applicants respectfully traverse the Examiner's rejections of claims 1-25, 28, and 29 under 35 U.S.C. § 103(a). A *prima facie* case of obviousness has not been established with respect to these claims, as amended.

The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. Such an analysis should be made explicit and cannot be premised upon mere conclusory statements. See M.P.E.P. § 2142, 8th Ed., Rev. 6 (Sept. 2007). "A conclusion of obviousness requires that the reference(s) relied upon be enabling in that it put the public in possession of the claimed invention." M.P.E.P. § 2145. Furthermore, "[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art" at the time the invention was made. M.P.E.P. § 2143.01(III), internal citation omitted. Moreover, "[i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious." M.P.E.P. § 2141.02(I), internal citations omitted (emphasis in original).

"[T]he framework for objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 U.S.P.Q. 459 (1966). . . . The factual inquiries . . . [include determining the scope and content of the prior art and] . . . [a]scertaining the differences between the claimed invention and the prior art." M.P.E.P. § 2141(II). "Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art." M.P.E.P. § 2141(III).

Here, a *prima facie* case of obviousness has not been established with regard to claims 1-25, 28, and 29, as amended, because the Office Action does not explain why the differences between Applicants' claims and the prior art would have been obvious to one of ordinary skill in the art.

- A. The references do not teach "cyclically repeating, in a first cycle, the copying, installing, and parallel testing for the plurality of blades in the first group, ... in a second cycle, a copying, installing, and parallel testing for the plurality of blades in the second group, ... [and] in a super cycle across the first and second groups, a copying, installing, and parallel testing of a third service ... ."**

Applicants' amended independent claims 1, 21, 28 and 29 substantially recite, among other things, "cyclically repeating, in a first cycle, the copying, installing, and parallel testing for the plurality of blades in the first group, ... in a second cycle, a copying, re-installing, and parallel testing for the plurality of blades in the second group, ... [and] in a super cycle across the first and second groups, a copying, re-installing, and parallel testing of a third service ... ." This amended subject matter is supported by at least paragraphs [0026] - [0028] of the specification, among other passages.

None of the seven cited references disclose, teach, or suggest using these three different cycles for copying, installing, and parallel testing services across at least two groups of computers and/or blades. The Examiner relies on *Reimer* to teach cycling subject matter, but *Reimer* falls far short of teaching the cycling subject matter recited in Applicants' claims. The cited passage of *Reimer* states, in part: "the life span of a server is increased due to the cycling of servers (rebooting due to long up-time) and it also increases the security of the system since an uncorrupted version of the preconfigured operating system is downloaded each time the server is rebooted." *Reimer*, p. 18, ll. 18-21. But this passage does not teach separate cycles for copying, installing, and parallel testing across at least two groups of computers and/or blades. It also does not include "a super cycle across the first and second groups, a copying, installing, and parallel testing of a third service," as claimed.

The other six references are also silent with regard to this subject matter. Therefore, no combination of the seven cited references teaches, suggests, or discloses all recitations of amended independent claims 1, 21, 28 and 29.

- B. The Office Action does not address "upon reaching a predefined threshold of a measurement value, automatically installing a first service on the new blade and a second service to a second blade in the second group of blades, wherein the first and second services differ, wherein the measurement values are taken from at least the following: usage of processor resources, processing times, usage of memory, remaining capacity of data storage, and communication parameters of a blade interface."**

Applicants' amended independent claims 1, 21, 28 and 29 substantially recite, among other things, "upon reaching a predefined threshold of a measurement value, automatically installing a first service on the new blade and a second service to a

second blade in the second group of blades, wherein the first and second services differ, wherein the measurement values are taken from at least the following: usage of processor resources, processing times, usage of memory, remaining capacity of data storage, and communication parameters of a blade interface." None of the seven cited references disclose, teach, or suggest using these three different cycles across at least two groups of computers and/or blades.

The measurement value subject matter was incorporated into the independent claims from claims 5 and 6, which Applicants have canceled. Those claims substantially recited taking a measurement value by at least one of "usage of processor resources, processing times, usage of memory, remaining capacity of data storage, and communication parameters of a blade interface" to determine measurement values. But amended claims 1, 21, 28 and 29 now include at least all of "usage of processor resources, processing times, usage of memory, remaining capacity of data storage, and communication parameters of a blade interface" to determine measurement values.

The Office Action does not address claims 5 and 6 as required, but the Office did previously address those claims in the February 29, 2008 Office Action. In that prior Office Action, the Examiner cited *Reimer* as teaching determining a measurement value based on "usage of processor resources." February 29, 2008 Office Action at 10-11. But, *Reimer* was not cited for the other claimed factors for determining the measurement values. Indeed, *Reimer* does not teach "the measurement values are taken from ... processing times, usage of memory, remaining capacity of data storage, and communication parameters of a blade interface," as amended claims 1, 21, 28 and 29 recite.

The other six cited references do not disclose, teach, or suggest this subject matter either. Therefore, no combination of the seven cited references teaches, suggests, or discloses all recitations of amended independent claims 1, 21, 28 and 29.

**C. The references do not teach “keeping the number of computers that are re-installing the operating system smaller than the number of computers that are not re-installing the operating system.”**

Applicants' amended independent claims 1, 21, 28 and 29 substantially recite, among other things, “keeping the number of computers that are re-installing the operating system smaller than the number of computers that are not re-installing the operating system.” None of the seven cited references discloses, teaches, or suggests this subject matter.

Nevertheless, the Examiner relies on *Gamache* for this teaching. Office Action at 5-6. In particular, the cited passages of *Gamache* state: “The locker node ... ensures that only one global update is in progress at any given time ... [and] the sender node ... sends the updates, one at a time, to the other nodes ... .” *Gamache*, col. 7, l. 53 - col. 8, l. 3.

This teaching is insufficient for two reasons. First, because the update is global, it can apply to all the nodes at once. Even though only one global update can occur at a time, that single global update can occur on all the nodes. Second, even though the sender node sends these updates one at a time, the passage is unclear as to whether the sender node makes one global send (to all nodes) at a time, or whether it sends an update to one node at a time. Even if the latter is true, *Gamache* does not teach waiting until the update is complete before sending the same global update to the next node. Therefore, a majority of nodes could receive an update before the first node to

receive the update finishes updating. Consequently, *Gamache* does not disclose, teach, or suggest "keeping the number of computers that are re-installing the operating system smaller than the number of computers that are not re-installing the operating system," as claimed.

The Examiner seems to correctly conclude that the other six cited references do not teach or suggest this subject matter either. Therefore, no combination of the cited references teaches, suggests, or discloses all recitations of amended independent claims 1, 21, 28 and 29.

**D. The references do not teach "[copying] a service that is running on the earlier detected blade from the earlier detected blade to the new blade."**

Amended independent claims 1, 21, 28 and 29 substantially recite, among other things, "[copying] a service that is running on the earlier detected blade from the earlier detected blade to the new blade." This subject matter is not disclosed, taught, or suggested by any of the seven cited references.

For this subject matter, the Examiner cites *Lau*, which states: "the server may be able to obtain a copy of that data object from one of the other servers in the cluster instead of from the centralized storage device." *Lau*, para. [0012]. But a data object is different than a "service" that is running on a blade. A service embodies an entire application or process, for example, whereas one of ordinary skill in the art would understand that "data objects" are utilized by such services. In other words, a data object is a smaller subset of information that is used by a service.

The Examiner seems to correctly conclude that the other six cited references do not teach or suggest this subject matter either. Therefore, no combination of the cited



references teaches, suggests, or discloses all recitations of amended independent claims 1, 21, 28 and 29.

**E. The 35 U.S.C. § 103(a) rejections should be withdrawn.**

As shown above, the cited references do not teach, suggest, or disclose all recitations of amended independent claims 1, 21, 28, and 29. Therefore, the differences between the cited references and the Applicants' claims have not been properly ascertained. Accordingly, the Office Action does not clearly articulate a reason why one of ordinary skill in the art would have modified the cited references to achieve the subject matter of independent claims 1, 21, 28, and 29. Dependent claims 2-4, 7-13, 15-20, 22, 24, and 25 each necessarily contain the recitations of amended independent claims 1 and 21. For at least this reason, no *prima facie* case of obviousness exists with respect to the pending claims. Applicants, therefore, respectfully request that the Examiner withdraw the 35 U.S.C. § 103(a) rejections of claims 1-4, 7-13, 15-22, 24-25, 28, and 29.

**IV. Conclusion**

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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/ Brannon C. McKay/

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